IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7237 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUBHASHBHAI R. SHAH

Versus

DISTRICT COLLECTOR

Appearance:

1. Special Civil Application No. 7237 of 2005

MR SATYEN B RAWAL for Petitioner No. 1

MR PRACHCHHAK, Ld. AGP for Respondent No. 1,3

MR DHAVAL D VYAS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 25/04/2005

ORAL JUDGEMENT

1. Rule. Mr. Prachchhak, learned A.G.P. waives service of rule for respondent nos.1 and 3 and Mr.Dhaval Vyas for respondent no.2. With the consent of the learned Advocates appearing for both the sides, the matter is taken up for final hearing on today.

2. The short facts of the case are that the Respondent Municipality revised the taxation rates and such rates of taxation were also made as subject matter of the proceedings under Section 258 of the Gujarat Municipality Act (hereinafter referred to as the 'Act'). Vide municipal case no.20/2004, it was held by the Collector under Section 258 of the Act that the elected body of the Municipality or the Administrator as the case may be has the power to decide the rates of taxation and ultimately as per the order dtd.31st May, 2004 the resolutions of the Municipality were approved. It appears that there is no dispute on the point that on the basis of the said resolutions which were confirmed by the Collector under Section 258 of the Act, the sanction came to be granted for revision of taxation rates by the State Government. It appears that, thereafter, there was some opposition and ultimately as per the resolution dtd. 24.8.2004 the elected body of the Municipality passed the resolution to reduce the rates of taxation subject to the approval of the State Government as required under the Act. It appears that the District Collector against the resolution no.28 dtd.24.08.2004 has exercised powers under Section 258 of the Act and has stayed the operation of the resolution passed by the Municipality. It may also be stated that together with the resolution no.28 dtd.24.08.2004, the Municipality has also passed the resolution no.39 dtd.28.04.2004 in respect of the repairing work of the toilets upto Rs.50,000/- and the said resolution is also stayed by the Collector under Section 258 of the Municipalities Act as per the order dtd.9th February, 2005. However, Mr.Raval, the learned Counsel appearing for the petitioner submitted that the petitioner is not challeging the exercise of the powers under Section 258 of the Act by the Collector qua resolution no.39 dtd.28.04.2004, and, therefore, the challenge is only to the exercise of powers under Section 258 of the Act qua the resolution no.28 dtd.24.08.2004, whereby the rates of taxation are reduced.

3. Heard Mr.Raval for the petitioner,Mr.Vyas for the respondent party and Mr.Prachhak, learned A.G.P. for the State Authority.

4. It appears that there is no dispute on the facts and the only question which may arise before the Court is as to whether the Collector can exercise power under Section 258 of the Act in a taxation matters where on the basis of resolution of the General Body of the Municipality, the rules are to be framed and they are yet to be sanctioned by the State Government as per provisions of the Gujarat Municipalities Act under

Section 102 read with Section 104 of the Act.

5. It is well settled that when there is special provisions under the Statute, the general power provided for the authority may not be applicable. So far as the taxation by the Municipality is concerned, Chapte-8 of the Act provides for Municipal Taxation, Section 99 enables the Municipality to leavy tax, Section 101 of the Act provides for procedure required to be observed by the Municipality as preliminary procedure before imposing the tax, Section 102 of the Act provides for power with the State Government to sanction or refuse the sanction of the taxes which may be levied by the Municipality, Section 103 of the Act provides for sanctioning of the rules for the purpose of collection etc. of the taxation and its publication thereof as provided under the proviso to Section 103 and Section 104 of the Act provides the power with the State Government to empower the Municipality to increase or reduce the amount of taxation. It appears that there is no dispute on the point that as per the earlier resolutions i.e. prior to 24.08.2004, the Municipality has imposed taxes on properties etc. and such imposition of taxation is sanctioned by the State Government. Therefore, in view of the sanction of such taxation by the State Government the Municipality is empowered to collect the taxes as sanctioned by the State Government. There is also no dispute on the point that after the sanction is granted by the State Government vide Resolution No. 28 dtd.24.08.2004 the Municipality has resolved to reduce the rates of taxation. There is also no dispute on the point that such reduction of the taxation is yet to be sanctioned by the State Government under Section 104 of the Gujarat Municipality Act. However, after the resolution is passed of reduction of the taxation but before the sanction is granted by the State Government it appears that the Collector has exercised powers under Section 258 of the Act and has stayed the operation of the resolution no.28 dtd.24.08.2004.

6. As per the scheme of the Act, for reduction of the taxes, the Municipality is required to follow the procedure as provided under Sections 101 to 104 of the Act and the power of according sanction or refusal the sanction finally vest to with the State Government. It may be that at the time when sanction is to be granted by the State Government under Section 104 of the Act, the State Government may call for report/opinion or recommendation if any of the District Collector but the final authority for implementation of such reduction in the taxes lies with the State Government. Therefore, in

view of the specific procedure provided for reduction of the taxes by the Municipality and granting sanction thereof by the State Government, the Collector could not have exercised the power under Section 258 of the Municipality Act. Even otherwise also when resolution is passed by the Municipality of reduction of the taxes, and when the role of the Collector in the process of sanctioning of the taxes by the State Government is only to express opinion, power under Section 258 of the Act cannot be exercised by the Collector, becuase if such powers are read u/s 258 of the Act, the capacity of the Collector would result into dual position namely; one of the authority to recommend and or to oppose the reduction of the taxes and another may be to decide as to whether the resolution is unlawful or not and the same normally cannot be permitted. As such if the State Government finds that the resolution of the Municipality of reduction of taxation is unlawful or considering the facts and circumstances the municipality should not be authorised to reduce the taxes, it may refuse to accord sanction. The perusal of Sections 99 to 104 read with Section 258, shows that in a matter where the taxation is to be imposed or reduced by the Municipality and is to be sanctioned by the State Government, the power under Section 258 of the Act would not be attracted. I am incline to take such view as specific provisions are made for sanctioning of the taxes by the Municipality. Even other wise also when the role in such procedure for sanctioning all the reduction of the taxes, of the Collector is that of authority opining, recommending or opposing such proposal, it would be reasonable and proper to construe that in such matters the Collector would not be in a position to exercise powers under Sectino 258 of the Act when the matter essentially lies in the domain of the State Government either to accord sanction or to refuse the sanction for reduction of any taxes which may be proposed by the Municipality.

7. In view of the above, it appears that the order of the Collector so far as it relates to the exercise powers under Section 258 of the Act qua the resolution no.28 dtd.24.08.2004 is without jurisdiction and cannot be sustained in the eye of law.

8. Mr.Vyas, the learned Counsel appearing for the Municipality voice the grievance that in any case until the reduction is sanctioned by the State Government, the petitioner cannot avoid the payment of taxes as prevailing now and in any event the Municipality should be at liberty to collect the amount of taxes subject to the final decision which may rendered by the State

Government on the basis of the resolution no.28 dtd.24.08.2004 and, therefore, he submitted that even if this Court holds that the Collector has no power under Section 258 of the Act qua the resolution no.28 dtd.24.08.2004 it may not be construed that the citizens are not required to pay any taxes to the Municipality until the sanction is granted by the State Government pertaining to the resolution no.28 dtd.24.08.2004.

9. I find that the position of the law is clear that until the reduction is sanctioned by the State Government, the Municipality is at the liberty to collect the amount of taxation as per the rates prevailing as on today. However, at the same time, in the event if reduction of taxes is sanctioned by the State Government, the Municipality may be required to refund the amount to the concerned tax payer. With a view to see that both the side may not take undue benefit therefrom, appropriate direction deserves to be issued. The learned Counsels appearing for both the sides have also aggreed that if some stipulated time is provided to the State Government for taking appropriate decision on the basis of the resolution no.28 dtd.24.08.2004 the same may also meet with the ends of the justice.

10. Under the above circumstances, the impugned order dtd.19th February, 2005 passed by the Collector so far as it realtes to staying the operation of the resolution no.28 dtd.24.08.2004 is quashed and set aside. It is further directed that the respondent no.2 Municipality shall be at the liberty to collect the taxes as per the rates prevailing as on today. However, the difference of the amount between the existing taxes and the taxes which are proposed to be reduced, shall be kept in a separate bank account by the Municipality and the amount shall not be utilized until the decision is rendered by the State Government either of sanctioning the reduction or refusal thereof. It is made clear that in the event the State Government sanctions the reduction of the taxes as per the resolution no.28 dtd.24.08.2004, the Municipality shall be required to refund the amount to the concerned tax payer including the petitioner herein and in the event the sanction is not granted by the State Government to such reduction, the Municipality shall be at the liberty to utilise the amount the amount in accordance with law. The aforesaid shall prejudiced to the contentions of both the sides to challenge the decision of the State Government of either to accord sanction or refusal thereof, as may be permissible in law. It is further directed that the State Government shall render the appropriate decision on the resolution no.28

dtd.24.08.2004 of the Municipality for sanctioning or for refusing the sanction as early as possible preferably within period of 4 months from the receipt of the order of this Court.

11. Rule made absolute to the aforesaid extent. Considering the facts and circumstances of the case, there shall be no order as to costs. Direct Service is permitted.

(JAYANT PATEL, J.)
25.04.2005

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